INDEX.

	PAGE
Notice of Petition	1
Petition	3
Certificate of Counsel	11
Note of Issue	11
Brief in Support of Application	13
STATEMENT OF FACTS	13
POINT I—The questions involved are of great public interest	15
POINT II—There is now a conflict of judicial opinion as to the proper interpretation of the First Cummins Amendment to the Interstate Commerce Act	17
POINT III—All the provisions of the Interstate Commerce Act should be uniformly interpreted and applied throughout the United States	23
POINT IV—The decision of this Court will settle the interpretation of the First Cummins Amendment to the Interstate Commerce Act and will bring about its uniform application throughout the United States	24
POINT V—The construction placed by the Court below on the First Cummins Amendment was erroneous	26

CASES CITED:

	PAGE
Bailey v. *Western Union Tel. Co.*, 97 Kansas 619	25
Bell v. *New York Central Railroad Co.*, 175 N. Y. S. 712, 187 App. Div. 564	21
Carbic Mfg. Co. v. *Western Express Co.*, 184 N. W. 35 (Minn.)	26
Conover v. *Wabash Railroad Co.*, 208 Ill. App. 105	17
Croninger v. *Adams Express Company*, 226 U. S. 491	25, 28
Durre v. *Western Union Tel. Co.*, 165 Wisconsin 190	25
Gillette Safety Razor Co. v. *Davis*, 278 Federal 864	19
Georgia, Etc., Railway v. *Blish Milling Co.*, 241 U. S. 190	16, 23
Hailey v. *Oregon Short Line*, 253 Federal 569	18
Haskel Implement Co. v. *Postal Tel. Cable Co.*, 114 Maine 277	25
Hunt v. *Hines*, 223 S. W. 798	18
Kahn v. *American Railway Express Co.*, 106 S. E. 126 (W. Va.)	26
Lissberger v. *Bush Terminal*, 197 N. Y. 281.	20
Meadows v. *Postal Tel. & Cable Co.*, 173 N. Car. 240	25
Metz Co. v. *Boston & Maine R. R.*, 116 N. E. 475 (Mass.)	26
Nashville, Etc., Ry. v. *Camper*, 78 So. 925 (Ala.)	26
Phillips v. *Grand Trunk*, 236 U. S. 662	23
Postal Telegraph-Cable Company v. *Warren-Goodwin Lumber Co.*, 251 U. S. 27	25

PAGE

Southern Railway v. *Bunch*, 109 S. E. 523.. 17

Southern Railway v. *Prescott*, 240 U. S. 632, 640, 36 Sup. Ct. 469, 60 L. Ed. 836 20

St. Louis, Etc., Railway v. *Starbird*, 243 U. S. 592 16

Western Union Tel. Co. v. *Bank of Spencer*, 53 Oklahoma 398 25

Western Union Tel. Co. v. *Bilisoly*, 116 Virginia 562 25

Western Union Tel. Co. v. *Schade*, 137 Tennessee 214 25

Western Union Tel. Co. v. *Lee*, 174 Kentucky 210 25

United States Supreme Court.

In the Matter

—of—

The Petition of WILLIAM M. BARRETT as President of the Adams Express Company,

Petitioner,

—against—

ARTHUR H. VAN PELT,

Respondent,

for a Writ of Certiorari to the Appellate Division of the Supreme Court of the State of New York for the First Department, to bring before the Supreme Court the case of ARTHUR H. VAN PELT,

Plaintiff-Respondent,

—against—

WILLIAM M. BARRETT, as President of the Adams Express Company,

Defendant-Appellant.

Sir:

PLEASE TAKE NOTICE that upon a certified copy of the transcript of record herein, and upon the annexed petition of William M. Barrett, verified the 23rd day of August, 1923, I shall submit the motion hereto annexed before the Supreme Court of the United States at the Capitol in the City of Washington, District of Columbia,

on the 15th day of October, 1923, at the opening of court on that day, or as soon thereafter as counsel can be heard, and that I shall then and there move for such further relief in the premises as may be just.

Dated, New York, August 22rd, 1923.

Yours, &c.,

CHARLES W. STOCKTON,
Attorney for Petitioner,
Office & P. O. Address,
2 Rector Street,
Borough of Manhattan,
City of New York.

To:

LAMAR HARDY, ESQ.,
Attorney for Respondent.

UNITED STATES SUPREME COURT.

In the Matter

—of—

The Petition of WILLIAM M. BARRETT as President of the Adams Express Company,

Petitioner,

—against—

ARTHUR H. VAN PELT,

Respondent,

for a Writ of Certiorari to the Appellate Division of the Supreme Court of the State of New York for the First Department, to bring before the Supreme Court the case of ARTHUR H. VAN PELT,

Plaintiff-Respondent,

—against—

WILLIAM M. BARRETT, as President of the Adams Express Company,

Defendant-Appellant.

To the Honorable Chief Justice and Associate Justices of the Supreme Court of the United States:

Your petitioner respectfully shows as follows:

I. Your petitioner is the President of the Adams Express Company, a joint stock associa-

tion, organized under the common law of the State of New York, which, prior to July 1, 1919, did a general express business in the United States.

II. This action was brought to recover damages for alleged delay in the transportation of a carload shipment of eggs delivered to the Adams Express Company at Louisville, Kentucky, by the Kentucky Creameries Company on February 23, 1918, consigned to the plaintiff's assignor, Harold L. Brown & Company, Greenwich Street, New York City.

It is alleged that the shipment did not arrive at destination until March 4, 1918, which was alleged to be several days beyond a reasonable time for delivery. The plaintiff's claim for damages is based solely upon the difference between the market value of the eggs on February 25, 1918, when it is claimed they should have arrived at destination, and March 4, 1918, the date when it is claimed that they first arrived.

The complaint does not specifically allege any negligence on the part of the defendant, nor does the proof attempt to show anything except the mere fact of delay in transportation beyond the alleged reasonable time for delivery.

III. It is undisputed that the first claim made by the plaintiff's assignor on the Adams Express Company was contained in a formal notice of claim dated October 4, 1918 (Defendant's Exhibit 1).

IV. The said shipment of February 23, 1918, was transported pursuant to the terms of a receipt

issued by the Adams Express Company which provided in part as follows:

> "Received from Kentucky Creameries the shipments hereinafter listed, subject to the Classification and Tariffs in effect on the date hereof, which shipments the Company agrees to carry upon the terms and conditions of the Uniform Express Receipt in effect on the date of shipment" (Plaintiff's Exhibit A).

Section 7 of the Uniform Express Receipt contained in the Classification and Tariffs filed with the Interstate Commerce Commission and in effect on February 23, 1918, provided as follows:

> "Except where the loss, damage or injury complained of is due to delay or damage while being loaded or unloaded, or damaged in transit by carelessness or negligence, as conditions precedent to recovery claims must be made in writing to the originating or delivering carrier within four months after delivery of the property or, in case of failure to make delivery, then within four months after a reasonable time for delivery has elapsed; and suits for loss, damage or delay shall be instituted only within two years and one day after delivery of the property, or, in case of failure to make delivery, then within two years and one day after a reasonable time for delivery has elapsed."

This provision of the Uniform Express Receipt was inserted therein pursuant to the authoriza-

tion contained in the Act of March 4, 1915, Chapter 176, otherwise known as the First Cummins Amendment to the Interstate Commerce Act.

The relevant part of said Act reads as follows:

> "Provided, further, that it shall be unlawful for any such common carrier to provide by rule, contract, regulation, or otherwise, a shorter period for giving notice of claims than ninety days and for the filing of claims for a shorter period than four months, and for the institution of suits than two years: Provided, however, That if the loss, damage or injury complained of was due to delay or damage while being loaded or unloaded, or damaged in transit by carelessness or negligence, then no notice of claim nor filing of claim shall be required as a condition precedent to recovery."

V. At the close of the plaintiff's case the defendant moved to dismiss the complaint on the ground that the plaintiff had not proved the filing of a claim within four months after the date of delivery of the shipment in accordance with the provisions of paragraph 7th of the Uniform Express Receipt which made such filing of a claim a condition precedent to recovery by the plaintiff. The Court at that time reserved decision on this motion.

VI. The defendant then introduced evidence to show the distinction between a claim and a "tracer" and rested without introducing further

testimony. Thereupon the plaintiff's counsel moved for the direction of a verdict, which motion was granted by the Court. The defendant then moved for a new trial, on which motion decision was reserved by the Court. Thereafter the Court handed down a decision denying the motion to dismiss the complaint and the motion for a new trial, holding that by failure to affirmatively plead the requirements of Section 7 of the Uniform Express Receipt the defendant had lost the right to avail himself of that defense upon the trial. (Opinion of Trial Justice, Record, fol. 459.) Subsequently judgment was rendered against defendant in favor of the plaintiff for $3,345.65 in the Supreme Court for New York County on June 7, 1922.

VII. Thereafter the defendant appealed to the Appellate Division of the Supreme Court for the State of New York, for the First Department, from the said judgment in favor of the plaintiff, and from the order denying the defendant's motion for a new trial. Said appeal came on for argument and on May 4th, 1923, the Appellate Division affirmed said judgment in all respects. (Opinion of Appellate Division by Page, J.) In the opinion, handed down at the time said judgment was affirmed, said Appellate Division of the Supreme Court for the First Department specifically stated that the provisions of subdivision K of Section 20 of the Interstate Commerce Act (Act of March 4, 1915, Chapter 176), prohibited a common carrier engaged in interstate commerce from requiring the filing of a claim in writing as a condition precedent to recovery in the case of claims for delay in transportation.

VIII. The defendant made a motion in the said Appellate Division for a reargument of the appeal or for leave to go to the Court of Appeals of the State of New York, but this motion was denied without opinion on May 25, 1923.

IX. Thereafter the defendant made a motion in the Court of Appeals of the State of New York for leave to appeal to that Court from the judgment of the Appellate Division for the First Department, but said motion was denied without opinion on July 14th, 1923.

X. The principal questions and propositions of law involved in the case are as follows:

(a) Does Chapter 176, Act of Congress, March 4, 1915, otherwise known as the First Cummins Amendment to the Interstate Commerce Act, prohibit common carriers engaged in interstate commerce from requiring the filing of written claims for delay in transportation as a condition precedent to recovery?

(b) Could the defendant waive the right and duty to take advantage of the defense that the plaintiff had failed to file a claim in writing within the time specified in the Uniform Express Receipt, by failing to plead such defense affirmatively.

(c) If Chapter 176, Act of Congress of March 4, 1915, prohibits a common carrier from requiring the filing of claims in writing for delay *caused by the carelessness or negligence of the carrier,* is the burden of alleging and proving the carelessness or negligence to bring the case within this exception on the shipper or the carrier?

Your petitioner further avers that the present case is one in which it is proper for this Court to issue a writ of certiorari for the following reasons, among others:

(a) Because the questions involved in this case are of great public interest, as they directly affect the requirements for the validity of a great number of claims for loss and damage arising out of transportation of merchandise in interstate commerce.

(b) There has already been a conflict of judicial opinion as to the proper interpretation of the First Cummins Amendment to the Interstate Commerce Act.

(c) It is particularly desirable that the interpretation of the First Cummins Amendment to the Interstate Commerce Act should be uniform throughout the United States, and should be similarly applied by the courts of every state, as otherwise there is grave danger that in some states claimants will secure discriminatory advantages over litigants in other states which have differently interpreted Act.

(d) The decision of the United States Supreme Court will settle the interpretation of the First Cummins Amendment to the Interstate Commerce Act, and will establish a uniform rule of law throughout the entire United States as to the requirements for the validity of claims for damage due to delay in transportation of merchandise in interstate commerce.

(e) Because the decision of the court below is based upon any erroneous interpretation of the Federal law and will establish an erroneous rule within the state of New York.

WHEREFORE, your petitioner prays that this Court will be pleased to grant a writ of certiorari in this case to the Appellate Division of the Supreme Court of the State of New York for the First Department to bring up this case to this Honorable Court, and for such proceedings therein as to this Honorable Court may seem just.

WILLIAM M. BARRETT,
By CHARLES W. STOCKTON,
Attorney for Petitioner,
2 Rector Street,
New York.

State of New York,
County of New York,
Southern District of New York—ss.:

WILLIAM M. BARRETT, being duly sworn, says that he is the petitioner herein; that he has read the foregoing petition and knows the contents thereof; that the same is true to the best of his knowledge and belief; that his knowledge and belief are based upon the record in the case, his general knowledge of the affairs of the Adams Express Company, and statements made to him by counsel in the case.

WILLIAM M. BARRETT.

Sworn to before me this
23rd day of August, 1923.

RITA OHLSEN,
Notary Public,
New York County.

I HEREBY CERTIFY that I have examined the foregoing petition and in my opinion the piettion is well founded, and that the case is one in which the prayer of the petitioner should be granted by this Court.

CHARLES W. STOCKTON,
Attorney for Petitioner.

UNITED STATES SUPREME COURT.

In the Matter

—of—

The Petition of WILLIAM M. BARRETT as President of the Adams Express Company,

Petitioner,

—against—

ARTHUR H. VAN PELT,

Respondent,

for a Writ of Certiorari to the Appellate Division of the Supreme Court of the State of New York for the First Department, to bring before the Supreme Court the case of ARTHUR H. VAN PELT,

Plaintiff-Respondent,

—against—

WILLIAM M. BARRETT, as President of the Adams Express Company,

Defendant-Appellant.

Now comes the petitioner above named by Charles W. Stockton, his attorney, and moves

this Court upon a certified copy of the transcript of the record herein, and upon the annexed petition verified the 23rd day of August, 1923, for a writ of certiorari directed to the Appellate Division of the Supreme Court of the State of New York for the First Department to move before this Court the case of Arthur H. Van Pelt, plaintiff-respondent, against William M. Barrett, as President of the Adams Express Company, defendant-appellant, recently decided by the Appellate Division of the Supreme Court of the State of New York for the First Department for such proceedings herein as to the Court may seem just, and for such other and further relief in the premises as may be just.

CHARLES W. STOCKTON,
Attorney for Petitioner,
Office & P. O. Address,
2 Rector Street,
Borough of Manhattan,
City of New York.

KENNETH E. STOCKTON, ESQ.,
Of Counsel for Petitioner.

UNITED STATES SUPREME COURT.

In the Matter

—of—

The Petition of WILLIAM M. BARRETT as President of the Adams Express Company,

Petitioner,

—against—

ARTHUR H. VAN PELT,

Respondent,

for a Writ of Certiorari to the Appellate Division of the Supreme Court of the State of New York for the First Department, to bring before the Supreme Court the case of ARTHUR H. VAN PELT,

Plaintiff-Respondent,

—against—

WILLIAM M. BARRETT, as President of the Adams Express Company,

Defendant-Appellant.

BRIEF IN SUPPORT OF APPLICATION FOR WRIT OF CERTIORARI.

Statement of Facts.

This is an application to review by writ of certiorari a judgment of the Appellate Division of the Supreme Court of the State of New York,

affirming a judgment of the Supreme Court for New York County, entered in favor of the plaintiff for the sum of $3,345.65.

The action was brought to recover damages for loss in market value due to alleged delay in transportation of merchandise delivered to the defendant in the State of Kentucky for transportation to New York City on February 23, 1918.

The principal defense was that no claim in writing had been filed within the time required by the provisions of the Uniform Express Receipt, under which the shipment was transported. The plaintiff claims that the provisions of the First Cummins Amendment, passed March 4, 1915, made it unlawful for a common carrier to require the filing of written claims for delay. To this contention the defendant replies that the First Cummins Amendment, at most, prohibits the carriers requiring the filing of written claims in cases of negligent delay, that the burden of proof is on the shipper to prove such negligence and this is not satisfied by the mere proof of the fact of delay beyond a reasonable time for delivery.

The case, therefore, involves the proper interpretation of the First Cummins Amendment to the Interstate Commerce Act, and it is imperative that this Court should by its decision secure to carriers and claimants alike a fair and uniform application of this section of the Interstate Commerce Act throughout the entire United States.

POINT I.

The questions involved are of great public interest.

If the plaintiff's contention is correct, and the First Cummins Amendment to the Interstate Commerce Act prohibits common carriers from requiring the filing in writing of claims for delay as a condition precedent to recovery, it is apparent that the case is of great public interest. It is unnecessary to remind this Court that the volume of interstate commerce directly affects the daily life of practically every individual in the United States. The increased complexity of modern living conditions with the growth of large cities has transformed the interstate transportation of produce and merchandise from a luxury or a desirable facility to a matter of absolute and vital necessity. In the transaction of such a large volume of interstate business in the transportation of food products and other merchandise, it is apparent that there will arise a large number of claims for damages due to delay, either from a drop in the market price or from the actual deterioration to the shipment.

Any provision of the Interstate Commerce Act which directly touches on these claims for delay in transportation must be of great importance both to the carriers and the public at large. It is vital to both to know whether in a given case it is necessary to file a claim in writing against the carrier within a certain time in order to protect the claimant's rights and give the carrier an opportunity for a fair investigation.

Carriers are naturally desirous of inserting in their contracts of carriage some provisions requiring a reasonable notice to them of claims for loss and damage, so that they may complete their investigations while the transaction is fresh in the minds of their employees and others. This Court, prior to the enactment of the First Cummins Amendment, had unqualifiedly approved and sustained provisions in express receipts or bills of lading by which the carrier sought to require the filing of claims in writing in order to enable it to investigate the merits of such claims while the data was still obtainable, and it seems clear that there is nothing inherently unreasonable in such a requirement.

Georgia, etc., Railway v. *Blish Milling Co.*, 241 U. S. 190;
St. Louis, etc., Railway v. *Starbird*, 243 U. S. 592.

The present case is especially important in view of the fact that the Interstate Commerce Commission has now required the carriers to adopt a provision that "suits for loss, damage or delay shall be instituted only within two years and one day after the date when notice in writing is given by the carrier to the claimant that the carrier has disallowed the claim or any part or parts thereof."

Such a provision is fair and reasonable but it is at once apparent that if it is unnecessary to file written claims for delay, the claimant's time for commencing suit on such claims will be automatically extended until two years after whatever time he shall see fit to present his claim and

have it rejected. Since the practical limit for the preservation of records by the carriers is three years, at the end of which period they are now authorized by the Interstate Commerce Commission to destroy their way-bills and records of individual shipments, it seems clear that the carriers would be absolutely defenseless in the face of a claim presented after that time.

If the First Cummins Amendment places any limitation upon their power to require the filing of written claims for delay, they have a right to be authoritatively advised of this fact, in order that they may obtain a revision of the present classifications to which they may be entitled either from the Interstate Commerce Commission or Congress.

POINT II.

There is now a conflict of judicial opinion as to the proper interpretation of the First Cummins Amendment to the Interstate Commerce Act.

In the case of *Southern Railway* v. *Bunch*, 109 S. E. 523, decided by the highest court of Georgia, the Court held that it was necessary to file claims for loss due to delay in transportation within four months after the date of delivery. The Court did not hand down any opinion with this decision.

In the case of *Conover* v. *Wabash Railroad Co.*, 208 Ill. App. 105, the Court of Appeals of Cook

County, an intermediate appellate court of Illinois, three judges sitting, held that the First Cummins Amendment prohibited carriers from requiring the filing of written claims for delay in transportation *due to the negligence of the carrier.*

In the case of *Hunt* v. *Hines,* 223 S. W. 798, the highest court of Missouri held that the First Cummins Amendment prohibited carriers from requiring the filing of written claims for delay in transportation.

The case of *Hailey* v. *Oregon Short Line*, 253 Federal 569, which is the only federal case in which the issues involved required a decision on this point, was decided in the District Court for the Southern District of Idaho. It held that the First Cummins Amendment prohibited carriers from requiring the filing of claims for delay in loading or unloading *due to negligence or carelessness of the carrier*, but that the burden of alleging and proving such negligence in order to bring the case within the terms of this exception to the Cummins Amendment was on the shipper. This case was brought to recover damages for delay in the transportation of a shipment of horses. The defendant pleaded the terms of the shipping agreement, and the plaintiff moved to strike out this defense. The Court held that the cause of action came under the phrase "damaged in transit by carelessness or negligence," saying:

> "So far as the facts in this case are concerned, the construction involves no lexical or grammatical difficulties. The damages claimed were not the result of delay or

injury in loading or unloading the horses; they were damaged 'in transit,' as that phrase is ordinarily understood, and by the carelessness and negligence of the carrier, if the averments of the complaint are true. The phrase 'carelessness and negligence' undoubtedly qualifies 'damaged in transit.'

In the case of a claim for damages suffered in the loading or unloading of a shipment, the grammatical relation of the phrase, especially when we consider the punctuation, is more difficult. But in some particulars the grammatical construction is manifestly defective, and, that being true, it may very well be that the use of a comma is the result of inadvertence rather than of design. If in other respects the structure were artistic, perhaps a different view should be taken; but under the circumstances it is thought we are warranted in entirely ignoring the comma after 'unloaded' or inserting it after 'transit.' In this view the provision in effect relieves the shipper from giving notice or filing claim for such damages, and such damages only, as result from the carrier's negligence, either in loading the shipment at the point of origin, or in carrying it to the point of destination, or in there unloading it. A claimant must either allege and prove notice, and the filing of a claim, or must allege and prove negligence. Here the plaintiffs have alleged negligence, but neither the giving of notice nor the filing of a claim, and to succeed it will therefore be incumbent upon them to prove negligence."

The case of *Gillette Safety Razor Co.* v. *Daris*, 278 Federal 864, was decided by the Circuit Court of Appeals for the First Circuit. The claim involved in that case was for absolute failure to

deliver, so that the construction of the First Cummins Amendment with reference to claims for delay was not directly in issue. However, the Court did say by way of dictum:

> "Thus read it is clear that Congress intended by the language of the act that the carrier should be responsible for loss occasioned the consignee by the carrier's negligent delay, negligence in loading or unloading, and negligence in transit. In other words, the liability imposed, where the required notice is not given, is for negligence, and as to these matters it differs in no material respect from the liability of a warehouseman, who is liable for negligence only. *Southern Railway Co.* v. *Prescott*, 240 U. S. 632, 640, 36 Sup. Ct. 469, 60 L. Ed. 836."

The case of *Lissberger* v. *Bush Terminal*, 197 N. Y. 281, was decided by the Appellate Term for the First Department of the New York Supreme Court, on December 12th, 1922, three judges sitting. It held that the First Cummins Amendment did not prohibit the carriers from requiring the filing of written claims for delay in transportation, the Court saying at page :

> "It is obvious that the letters to the defendant demanding delivery of the shipment, and payment for its total value because of its supposed non-delivery, cannot be construed in any way as a claim made in writing for damages sustained because of mere delay in the delivery of the shipment, for which this action was brought. The contention of the plaintiffs that their claim comes within the excepted cases specified in the bill of lading so that they were not required to file any claim, is not

> well founded. An examination of the language of the bill, quoted above, shows clearly that the only cases in which notice is not required are: (1) Where the loss, damage or injury is due to delay or damage while being loaded or unloaded; and (2) where the shipment is 'damaged' in transit by carelessness or negligence.
>
> The instant case does not fall within either of the two excepted cases. The plaintiffs did their own unloading, and no claim arises under the first class of cases. The second class of excepted cases, in which no notice is required to be filed, is clearly confined solely to claims for 'injury' to a shipment 'damaged in transit by carelessness or negligence' of the carrier. In the instant case the claim is not one for damage in transit, but for delay in transit, and therefore a claim must be filed within the prescribed time of four months after delivery, even though the delay may have been due to negligence."

The case of *Bell* v. *New York Central Railroad Co.*, 175 N. Y. S. 712, 187 App. Div. 564, decided by the Appellate Division for the First Department of the New York Supreme Court, was the sole authority cited by the Court below in support of their decision in this case.

The Court in that case construed the Cummins Amendment as follows:

> "It will be noted that both the Cummins Amendment and the bill of lading provision make a double classification of claims, to-wit: (1) Those for loss due to delay or damage while being loaded or unloaded, or damaged in transit, which we call transit claims; and (2) those for loss

> otherwise sustained, which we call non-transit claims. The Cummins Amendment permitted the carrier to require as a condition precedent to recovery the filing of a non-transit claim within four months, and in such cases to require suit to be instituted within two years. In the case of transit claims it forbade the carrier to require the filing of claim as a condition precedent to recovery, but authorized a requirement that suit be instituted within two years."

The Court did not specifically pass on the question as to whether or not it was necessary to file claims for delay in transportation, and whether or not the words "loss due to delay or damage while being loaded or unloaded" refer to any case of delay or merely to delay while being loaded or unloaded. Instead the Court divided all claims into two classifications—transit claims and non-transit claims—the first apparently covering all cases of damage in transit and the second applying only to cases of actual failure to deliver.

Thus we see that various courts have already differed as to the precise interpretation of this provision of the First Cummins Amendment, and in default of any authoritative expression of the law from this Court, it is probable that future decisions of other courts will contain similar discrepancies.

POINT III.

All the provisions of the Interstate Commerce Act should be uniformly interpreted and applied throughout the United States.

The fundamental purpose of the Interstate Commerce Act was to bring an end to the practice of rebates and discriminations which prevailed prior to its adoption and to secure to all shippers throughout the United States equal facilities. Not only has the fundamental purpose of the Act to prevent discriminations in favor of particular shippers or localities been extended to apply to every phase of transportation problems, but the same principle of uniform treatment has been applied to all phases of the relations between shippers and carriers, so that a carrier is just as much legally bound to assert against all shippers the defenses which it asserts against any as it is to give the same service to all shippers at the same rates.

> *Georgia, etc., Ry.* v. *Blish Milling Co.*, 241 U. S. 190;
> *Phillips* v. *Grand Trunk*, 236 U. S. 662.

It is submitted that the fundamental purpose of the Interstate Commerce Act demands that this Court authoritatively interpret any provisions of the Cummins Amendment which may be ambiguous, especially whenever it appears that different interpretations of such section of the

Interstate Commerce Act will give to claimants in certain localities of the United States peculiar advantages over claimants in other localities. Certainly, if claimants in the State of Georgia must file in writing their claims for delay and bring suit on these claims within two years after their rejection, while claimants in New York are not compelled to file their claims in writing and have an unlimited time for bringing suits on claims for delay, there is an open and manifest discrimination of the most flagrant kind. Moreover, if claimants in Illinois and Idaho must affirmatively prove that the negligence which caused the delay was due to the fault of the carrier in order to excuse their failure to file a claim, while claimants of New York can recover without proof of anything except the mere fact of delay, there will again result a very real and unjust discrimination.

POINT IV.

The decision of this Court will settle the interpretation of the First Cummins Amendment to the Interstate Commerce Act and will bring about its uniform application throughout the United States.

Since the enactment of the Interstate Commerce Act and the amendments thereto, this Court has uniformly held that the field of regulation of the agencies of interstate commerce has been taken over by Congress and that the state

legislatures have no longer the power in any way to regulate or burden interstate commerce, or the state courts the right to deny to parties any rights or privileges which they might have under the Interstate Commerce Act or the federal decisions concerning it.

Croninger v. *Adams Express Company*, 226 U. S. 491;
Postal Telegraph-Cable Company v. *Warren-Godwin Lumber Co.*, 251 U. S. 27.

The decisions of the state courts in construing the Interstate Commerce Act with reference to interstate shipments have uniformly followed the construction adopted down by this Court, even when it involved a reversal of the principles of law previously enunciated by them.

Western Union Tel. Co. v. *Bank of Spencer*, 53 Oklahoma 398;
Haskell Implement Co. v. *Postal Tel.-Cable Co.*, 114 Maine 277;
Western Union Tel. Co. v. *Bilisoly*, 116 Virginia 562;
Bailey v. *Western Union Tel. Co.*, 97 Kansas 619;
Durre v. *Western Union Tel. Co.*, 165 Wisconsin 190;
Western Union Tel. Co. v. *Schade*, 137 Tennessee 214;
Meadows v. *Postal Tel. & Cable Co.*, 173 N. Car. 240;
Western Union Tel. Co. v. *Lee*, 174 Kentucky 210;

Carbic Mfg. Co. v. *Western Express Co.*, 184 N. W. 35 (Minn.);
Kahn v. *American Railway Express Co.*, 106 S. E. 126 (W. Va.);
Nashville, etc., Ry. v. *Camper*, 78 So. 925 (Ala.);
Metz Co. v. *Boston & Maine R. R.*, 116 N. E. 475 (Mass.).

POINT V.

The construction placed by the Court below on the First Cummins Amendment was erroneous.

It is submitted that there are at least three grounds which should be persuasive in construing the provisions of the First Cummins Amendment, and all of them point toward a different construction from that adopted by the Court below.

(a) The grammatical construction of the First Cummins Amendment and the plain meaning of the words used clearly indicate an intention on the part of Congress that carriers should not be deprived of the right to require the filing of written claims for delay in transit.

In the first place, this provision is inserted as an exception to the general authority permitting carriers to require the filing of written claims for loss and damage as a condition precedent to recovery. If Congress had intended to limit the right to require the filing of a claim to cases of

actual failure to deliver, it would have used language designed to clearly indicate such an intent. Such a purpose would have been easy to express in simple language and it cannot be supposed that Congress had in mind such simple and easily defined classifications when it inserted the complicated exception to the general authorization for requiring the filing of written claims.

Moreover, it is a well recognized rule of construction that specific exceptions to the general rule of law enunciated by a statute should be strictly construed.

> "The enacting clause is of course the principal part of the statute, and, as its terms may be presumed to have embodied the main body of the act, the proviso should be strictly construed."

See 36 Cyc. 1162, and cases cited.

In the second place, the punctuation clearly indicates that the draftsman intended that the exception should cover two general classes of claims, and these classes were marked off by commas. These two classes of claims are those arising in loading or unloading, which may be due either to damage or to delay in loading or unloading, and those arising in transit. If it had been intended to create three classes of claims (1) loss due to delay, (2) loss due to damage while being loaded or unloaded, and (3) loss due to damage in transit, it is clear that a comma would have been inserted after the word "delay" as it is inserted after the word "unloaded." There is no doubt that this section is clumsily worded, but it is obvious from the

punctuation that there are only two forms of exceptions to the requirements of filing of claims: (1) delay or damage *while being loaded or unloaded,* and (2) damage in transit by carelessness or negligence.

> (b) The circumstances surrounding the adoption of the First Cummins Amendment indicate clearly that the word "delay" was meant to be read in connection with the words "while being loaded or unloaded."

This amendment was adopted because of the agitation all over the country over the decision in the case of *Croninger* v. *Adams Express Company,* 226 U. S. 491. While its principal force was directed toward the practice of released values which were sanctioned in the *Croninger* case, it was also felt that many of the requirements adopted by some of the carriers with reference to the filing of claims for loss and damage were unreasonably harsh. In some cases these requirements were as low as from one to five days, and while perhaps reasonable from the viewpoint of the carrier alone were not practicable for the great body of shippers.

The agitation for relief both as to the valuation feature and the limitation for filing claims was created principally by the shippers of live stock who claimed to be the principal sufferers from the existing forms of carrier contracts. On perusing the discussions in the House of Representatives and the Senate attendant upon the adoption of the First Cummins Amendment (Congressional Record, Volume 51, pp. 9616 to 9626, 9777 to 9783, vol. 52, pp. 5446 to 5451) one is immediately struck with the fact that the illus-

trative cases used are confined practically entirely to shipments of live stock and that the hardships of the shippers which it was claimed the amendment would remedy were the hardships of live stock shippers. It was the same general force of popular agitation initiated by the live stock shippers which caused the adoption of the 28-hour law, providing that railroad companies should not keep live stock in cars longer than 28 hours without unloading for rest and food. When one holds this fact in mind the provisions of the First Cummins Amendment immediately become clear.

So far as the transportation of inanimate objects is concerned, it is clear that any exception as to damage while being loaded or unloaded is one that would be practically insignificant. Even if such damage were of sufficiently common occurrence to make it worth while specifically to except from the general operation of the Act, it seems clear that it would, as a practical matter, be impossible ever to prove that an inanimate object which was delivered in a damaged condition had been injured while being loaded or unloaded. However, when you remember that the draftsman of this provision had in mind the existing evils with reference to shipments of live stock, the section becomes at once full of meaning. The greatest source of loss and damage claims in the case of live stock shipments was the delay in loading or unloading shipments of live stock. Animals would be delivered by the shipper to the carrier and placed in a pen at the railroad station where they would be kept for one or two days before the necessary car facilities could be procured. A similar situation

would often arise at the point of destination and such delay in loading and unloading caused a considerable loss in weight and sometimes more serious injuries to the animals. It was to cover such a case that the exception in question was inserted in the Cummins Amendment.

Bearing in mind the circumstances under which the amendment was adopted, it seems clear that Congress intended that the word "delay" should explain and amplify the exception with reference to loss and damage sustained in connection with the loading and unloading of live stock shipments.

> (c) The result of a decision by this Court construing this section of the First Cummins Amendment broadly to prohibit carriers from requiring the filing of written claims in all cases of "transit claims" would be very far-reaching and unfair.

In the first place it would practically nullify the obvious intention of the framers of the Cummins Amendment to authorize carriers, in the case of ordinary claims, to adopt reasonable requirements for the filing of written notice of claims. It would restrict the adoption of such requirements to the cases where the claim arose out of some circumstances *unconnected* with the loading, transportation or unloading of the shipment. The only remaining conceivable form of claim would be one for damages for the carriers' failure to make delivery. Yet there is as much reason for requiring the filing of claim for delay as there is for requiring the filing of a claim for loss. The carrier may have any one of a number of defenses to a claim for delay, if it is due to

the act of God or other causes excepted by the shipping contract or by a general congestion. In order to establish the causes for the delay to a particular shipment, it is just as necessary to know seasonably that there is a claim with reference to a particular shipment as it is in the case of a failure to deliver.

The requirement that a notice of claim be filed within not less than four months from the time of delivery is perfectly reasonable. It is as reasonable in the case of a claim for delay as it is in the case of a claim for loss or damage. No argument can be advanced why a carrier should not be allowed to make such a requirement or why it should be expressly prohibited by statute. It is submitted that the language of the exception contained in the Cummins Amendment should be strictly construed as in the case of all exceptions, and that it should not be extended beyond its clear requirements to prevent the carriers from protecting themselves against unseasonable delay in presentation of claims.

WHEREFORE, it is respectfully submitted that the writ of certiorari should issue as prayed.

August 23, 1923.

CHARLES W. STOCKTON,
Attorney for Petitioner.

KENNETH E. STOCKTON,
Of Counsel for Petitioner.